

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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PATRICK MORIN *as President of the Empire  
Regional Council of Carpenters*, JOHN FUCHS,  
PATRICK MORIN, ANTHONY MACAGNONE,  
MICHAEL CONROY, DAVID HAINES,  
GEOFFREY JAMES, JAMES MALCOLM,  
WILLIAM MACCHIONE, ALAN EHL,  
WILLIAM WEITZMAN, KEVIN HICKS,  
JOSEPH OLIVIERI, DALE STUHL MILLER,  
ARTHUR GODSELL, ROBERT CARLINO,  
PAUL J. O'BRIEN, JR., JOSEPH GANIRO,  
ROSS PEPE, RICHARD O'BEIRNE, JAMES  
LOGAN, ANTHONY CAROPRESSO, ANTONIO  
MARTINS, TODD HELFRICH and FRANK WIRT  
*as Trustees of the Empire State Carpenters Welfare,  
Pension, Vacation, Annuity, Scholarship, Apprentice-  
Training, Labor-Management Cooperation and  
Charitable Trust Funds*,

Plaintiffs,

-against-

FALCONE BUILDING & REMODELING, INC.,

Defendant.

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**APPEARANCES:**

**Levy Ratner, P.C.**

*Attorneys for the plaintiffs*  
80 Eighth Avenue, 8<sup>th</sup> Floor  
New York, NY 10011

By: Owen Rumelt, Esq., Of Counsel

**NO APPEARANCE:**

Falcone Building & Remodeling, Inc.

**SPATT, District Judge.**

On September 9, 2005, the plaintiffs commenced this action against the defendant,  
Falcone Building & Remodeling, Inc., seeking to collect delinquent employee benefit plan

**ORDER**

05-CV-4281 (ADS) (AKT)

contributions and unpaid wages owed by the defendant. On June 27, 2006, the Court entered a default judgment against the defendant, and referred the matter to United States Magistrate Judge A. Kathleen Tomlinson for an inquest as to damages, including reasonable attorneys' fees and costs.

On April 17, 2012, Judge Tomlinson issued a Report and Recommendation (the "Report") recommending that the Court award the plaintiffs damages as follows:

- (1) \$173,645.87 for unpaid fringe benefits;
- (2) \$28,534.75 in interest on the unpaid fringe benefits;
- (3) \$34,729.17 in liquidated damages;
- (4) \$3,310.00 in attorney's fees; and
- (5) \$2,734.54 in unpaid wages and interest, for a total sum of \$242,954.33.

(Report at 14.) Judge Tomlinson further recommended that the Court award the plaintiff post-judgment interest at the rate set forth in 28 U.S.C. § 1961 as of the date of the entry of final judgment. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Tomlinson's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Tomlinson's Report, it is hereby

**ORDERED**, that Judge Tomlinson's Report and Recommendation is adopted in its entirety. The Court awards the plaintiffs: (1) \$173,645.87 for unpaid fringe benefits; (2) \$28,534.75 in interest on the unpaid fringe benefits; (3) \$34,729.17 in liquidated damages; (4) \$3,310.00 in attorney's fees; (5) \$2,734.54 in unpaid wages and interest; and (6) post-

judgment interest at the rate set forth in 28 U.S.C. § 1961 as of the date of the entry of final judgment, and it is further

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of the plaintiffs in the amount of \$242,954.33, plus post-judgment interest pursuant to 28 U.S.C. § 1961, and it is further

**ORDERED**, that the Clerk of the Court is directed to close this case.

**SO ORDERED.**

Dated: Central Islip, New York  
September 19, 2012

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge